

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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SHAW FAMILY ARCHIVES, LTD., EDITH :  
MARCUS and META STEVENS, :  
:  
Plaintiffs, : Case No. 05 Civ. 3939 (CM)  
:  
-against- : Hon. Colleen McMahon  
:  
CMG WORLDWIDE, INC. and MARILYN :  
MONROE LLC, :  
:  
Defendants. :  
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**DECLARATION OF BARRY I. SLOTNICK**

BARRY I. SLOTNICK, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am a member of the firm Loeb & Loeb LLP, attorneys for defendant Marilyn Monroe LLC ("MMLLC") in this matter. I am admitted to practice before this Court and respectfully submit this declaration in support of Defendants / Consolidated Plaintiffs' cross-motion for summary judgment on their public domain claim, and in opposition to Plaintiffs / Consolidated Defendants' motion for summary judgment dismissing the public domain claim.

2. On December 26, 2007, the parties appeared before Magistrate Judge Fox to address a discovery dispute. A copy of the transcript of that hearing is annexed as Exhibit A hereto.

3. At the hearing, I requested that Magistrate Judge Fox compel plaintiff Shaw Family Archives, Ltd. ("SFA") to produce two binders of copyright registration materials that were discussed at the recent deposition of Melissa Stevens, SFA's Rule 30(b)(6) witness. (*See* Ex. A. at 5-6). Magistrate Judge Fox then ordered that SFA make the binders in question available for inspection, but not copying. (*See id.* at 8).

4. The next day, SFA made available a single binder, purportedly containing the entirety of its copyright registrations and certificates pertaining to Marilyn Monroe photographs. I reviewed the binder in the offices of SFA's attorney.

5. I subsequently marked a number of documents from the binder as exhibits 15-22 to the continued deposition of Melissa Stevens. SFA has refused to provide us with copies of these deposition exhibits, or any other materials from the binder. Accordingly, the following facts are set forth to the best of my recollection, based on my review of the binder on December 27, 2007.

6. In reviewing the binder, I did not see any documents evidencing any renewals, prior to 1983, of any copyrights in connection with the book *Marilyn Monroe as the Girl* (the "Ballantine Book"), or any of the photographs contained therein.

7. In reviewing binder, I did not see a single copyright registration from the 1950s relating to the publication of Marilyn Monroe photographs in newspapers or magazines. Nor did I see any materials relating to the publication of Sam Shaw photographs of Marilyn Monroe in magazines or newspapers in the 1950s, including whether such photographs were published with a proper copyright notice. Nor did I see any documents, from the 1980s or earlier, evidencing the renewal of any copyrights in connection with photographs that were published in newspapers or magazines in the 1950s.

8. In reviewing the binder, I came across a copyright registration application that plaintiffs filed in November 2007, for a collection of photographic images entitled "The Making of the Seven Year Itch." The application included copies of all of the photographs in the collection. I subsequently marked these materials as exhibits 21 and 22 to the Melissa Stevens deposition.

9. In the copyright registration application for "The Making of the Seven Year Itch," plaintiffs did not indicate that any of the photographs in the collection had been previously published. However, based on my review of the photographs in SFA's binder, it appears that a number of the photographs in "The Making of the Seven Year Itch" collection were previously published. At least two photographs in the collection appear to have been previously published in the Ballantine Book (at pages 65 and 78). At least one photograph in the collection appears to have been previously published in a book entitled *Marilyn Monroe. The Life. The Myth.* (at page 146). And at least one photograph in the collection appears to have been previously published in a book entitled *Marilyn Among Friends* (at page 52).<sup>1</sup>

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York  
February 11, 2008.

  
Barry I. Slotnick

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<sup>1</sup> The relevant pages from the books discussed above are attached as exhibits to the Declaration of Jonathan Neil Strauss.